IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

Civil Action No. 45 of 2006

BETWEEN : **SALENDRA DEVI** f/n Suruj Nath of Vunivau, Bua, Process Worker.

PLAINTIFF

AND : **PHUL KUMARI** f/n Hardeo Singh of Navudi, Seaqaqa, Domestic Duties

1ST DEFENDANT

AND : **MAHARAJI** f/n Madho of Togo, Lavusa, Nadi, Domestic Duties

2ND DEFENDANT

AND : **CHANDAR BHAN MAHABIR** f/n Mahabir of United States of America

3RD DEFENDANT

BEFORE : **Justice Deepthi Amaratunga**
COUNSEL : **Mr. A. Sen** for the Plaintiff
Mr. A. Ram for 1st and 3rd Defendants
Date of Hearing : **3rd March 2014**
Date of Decision : **25th March 2014**

DECISION

INTRODUCTION

1. The Defendant obtained an order of the court compelling the Plaintiff to answer certain interrogatories. There is no appeal against the said order of the court that compelled the Plaintiff to answer the interrogatories within the stipulated time period. The summons for interrogation filed in 2009 and the Plaintiff had ample time to obtain information sought.

The plaintiff had either avoided and or insufficiently answered to the interrogatories and in the affidavit in opposition states that 'it was improper and wrong to compel me to look for information until such time I can find answers'. It is an admission for not answering the interrogations. The Defendant filed summons in terms of Order 26 rule 6(1) and 6(2) of the High Court Rules 1988 for dismissal of the action or for committal.

ANALYSIS

2. Editorial Introduction of the Supreme Court Practice (1988) at 26/0/2 relating to the discovery by interrogatories states as follows

> *'26/0/2 The Courts of Equity evolved a method of proof to which the general name "discovery" was given and which comprised two procedures: (1) discovery of deeds and documents and (2) discovery of facts. The former procedure was the foundation of discovery of documents in the modern sense as dealt with by O.24. Under the latter procedure a* ***person might be ordered to answer as to the existence of some fact within his knowledge and relevant to a dispute; this form of discovery was the origin of interrogatories administered to another party to an action under the provisions of O.26*** *(see further explanation given in para. 24/0/2, above).*
>
> *This Order contains eight rules. Rules 1 to 6 were substituted in 1989 in the light of recommendations made by the Civil Justice Review Body.*
>
> *A distinction is drawn between "interrogatories without order" and "ordered interrogatories" and within the Order generally the former variety of interrogatories are treated in the same way as the latter. In either event, interrogatories should not be served unless they are necessary either for disposing fairly of the cause or matter or for saving costs (r.1 (1)). Any order as to interrogatories made by the court may be revoked or varied by subsequent order (r.8). Answers to interrogatories shall, unless the court otherwise directs, be on affidavit (r.3 (2). A party may put in evidence at the trial the other party's answers to interrogatories or some of them or part of an answer (r.7).*
> *…………………..*
>
> ***Rule 6 prescribes the sanctions for failure to answer interrogatories or to comply with an order of the court relating to interrogatories. In such circumstances the court may make such order as it thinks just****. Where the default is due to lack of diligence of a party or his solicitor the* ***court will usually make an "unless order,"*** *stipulating that the action*

shall be dismissed or the defence struck out (as the case may be) unless the defaulting party shall answer the interrogatories or comply with the earlier order within a given time. ***Where, however, the default is contumelious, the defaulting party may be liable to the more severe sanctions prescribed in r.6 (1) and (2).'*** *(emphasis is mine)*

4. In the affidavit in opposition of the Plaintiff, it was stated as follows

> *'2.* ***It will be improper and wrong to compel me*** *to look for information until such time I can find answers.*
>
> *3. I have complied with my obligation to answer the interrogatories and I want this action to be fixed for trial as soon as possible.'(emphasis added)*

5. The Plaintiff's affidavit not only admits the default but also directly challenged the order of the Master which directed the Plaintiff to answer the interrogatories, and if she was not satisfied with the order she should have appealed or sought variation of it, instead of challenging the authority of the Master to make such an order. In law there are rules and procedures to deal with most of the situations and without exploring those parties cannot act as stubbornly as the Plaintiff in this case questioning the authority of the court and expressing her view on the order of the court, as 'improper' and also 'wrong'.

6. Any order made by the Master in terms of the Order 26, in relation to the interrogatories can be varied by the same forum even without an appeal in terms of Order 26 rule 8. So, if the Plaintiff was unable to answer or needed time she could have sought a variation or even revocation of the order of the master before the court that made the said order. Such variation or revocation is possible if the Plaintiff has shown sufficient cause for such variation or revocation. The absence of such a request and stubbornly refusing to comply the order of the court cannot be condoned for efficient administration of justice. The affidavit in opposition of the Plaintiff indicate her attitude towards the order of the court and her default and it may perhaps be considered as contumelious, to say the least.

7. I do not think that I need to analyse the law on interrogatories and the appropriateness of the interrogatories for this decision, under the present circumstances. Though the court

can dismiss the action and also charge the party in default for contempt, I would incline to grant the Plaintiff another opportunity to comply with the order within one month from this order and if not the Plaintiff's action will be dismissed.

8. In the Supreme Court Practice (UK) 1999(Whiter Book) at 26/4/7 it is stated as follows.

> *'Interrogatories which relate to any matter in question in the cause or matter are admissible -*
>
> *This means that "the right to interrogate is not confined to the facts directly in issue, but extends to any facts the existence or non –existence of which is relevant to the existence or non-existence of the facts directly in issue" (per Lord Esher M. R. In* ***Marriott v. Chamberlian*** *(1886) 17 Q.B. B. 154 at 163, CA; approved in* ***Nash v. Layton*** *[1911] 2 Ch. 71 at 76, 83, CA:* ***Osram Lamp Works Ltd v. Grabriel Lamp Co****. [1914] 2 Ch.129, CA; see also* ***Hooton v. Dalby*** *[1907] 2 K.B. 18, per Buckley L.J. at 21, and* ***Blair v. Haycock Cadle Co****.(1917) 34 T.L.R. 39, HL, where Lord Finlay L.C. said that it was not necessary that answers to interrogatories should be conclusive on the question at issue. It was enough that they should have some bearing on the question and that they might form a step in establishing liability). Interrogatories are "not limited to giving the plaintiff a knowledge of that which he does not already know, but include the getting an admission of anything which he has to prove on any issue which is raised between him and the defendant" (Att.-Gen. V. Gaskill (1882) 20 Ch. D., per Cotton L.J., at p.528). In short, interrogatories are admissible which go to support the applicant's case or to impeach or destroy the opponent's case (****Plymough Mutual Co-op****.* ***Society v. Trader's Publishing Association*** *[1906] 1 K.B. 403, per Stirling L.J. at 416, CA;* ***Saunders v. Jones*** *(1877) 7 Ch. D. 435, CA).'*

9. The issue of whether the Plaintiff was a citizen of Fiji at the time of the transaction is paramount importance to this action and if that cannot be stated with certainty, no purpose will be served by proceeding to trial. The purpose of the interrogatories and discovery are not to hide relevant facts from the court as well as from the other side. Both time and money can be saved by proper administration of the interrogatories. The citizenship of the Plaintiff is paramount for this action and without any evidence of that, or stating her citizenship status with supporting evidence the action is doomed to fail due the legal provisions relating land transactions regarding foreigners.

10. It is not a difficult thing to answer facts relating to this issue and avoiding this issue will not help the Plaintiff in this action as it will determine the fate of her action. The affidavit in support of this summons quoted the answers given by the Plaintiff and the directions of the Master. Though there is no direct question as to whether the Plaintiff was a citizen of Fiji at the relevant time, this is what the Defendant was seeking to obtain from the circumstantial evidence. So, it is important for the Plaintiff to ascertain the citizenship status of the Plaintiff at relevant time, before proceeding to trial.

11. The Plaintiff was aware of the interrogation since 2009 and the time period is sufficient to obtain the information sought if she made a genuine effort to obtain them. The interrogatories served need to be answered properly and sufficiently by the Plaintiff. The Plaintiff should answer whether she was a citizen of Fiji at the time relevant to the alleged cause of action (i.e 14.01.2006) and if so should be able to substantiate her citizenship with the relevant information requested in the interrogatories. If those vital issues are answered it can be considered as proper and sufficient answer.

FINAL ORDERS

a. The Plaintiff is granted one month from today to answer to the interrogatories.
b. If the interrogatories are not answered sufficiently and properly as directed by the court, the plaintiff's action will be struck off.
c. The cost of this application is assessed summarily at $1,000 to be paid within one month.

Dated at **Suva** this **25th** day of **March, 2014**.

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Justice Deepthi Amaratunga

High Court, Suva